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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LONG ISLAND OFFICE

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UNITED STATES OF AMERICA

COMPLAINT AND AFFIDAVIT
IN SUPPORT OF AN ARREST
WARRANT

- against -

BRENDON CUEVAS,

M. No. _____
(T. 18, U.S.C., §
2252(a)(1))

Defendant.

- - - - -

MJ-12-0101

EASTERN DISTRICT OF NEW YORK, SS.:

DANIELLE M. MESSINEO, being duly sworn, deposes and says that she is a Special Agent with the Federal Bureau of Investigation ("FBI"), duly appointed according to law and acting as such.

On or about October 22, 2011, within the Eastern District of New York and elsewhere, the defendant BRENDON CUEVAS did knowingly and intentionally transport and ship, using a means and facility of interstate and foreign commerce, and in and affecting interstate and foreign commerce, one or more visual depictions, the production of such visual depictions having involved the use of one or more minors engaging in sexually explicit conduct and such visual depictions were of such conduct.

(Title 18, United States Code, Section 2252(a)(1)).

The source of my information and the grounds for my belief are as follows:¹

¹ Because the purpose of this affidavit is merely to establish probable cause to arrest, I have not set forth all of the facts and circumstances concerning this investigation of which I am

1. I have been employed as a Special Agent of the FBI since January 1995, and am currently assigned to the Long Island Resident Agency. Since June 2003, I have been assigned to investigate Sexual Exploitation of Children ("SEOC") violations of federal law, including the trafficking of child pornography. I have gained expertise in the conduct of such investigations through training in seminars, classes, and daily work related to conducting these types of investigations, including the execution of numerous search warrants relating to child pornography offenses and subsequent prosecution of offenders. I am also a member of the Eastern District of New York Project Safe Childhood Task Force.

2. I am familiar with the information contained in this affidavit based on my own personal participation in the investigation, my review of documents, my training and experience, and discussions I have had with other law enforcement personnel concerning the creation, distribution, and proliferation of child pornography. Additionally, statements attributable to individuals herein are set forth in sum and substance and in part.

THE UNDERCOVER INVESTIGATION

3. In or about May 2011, a Task Force Officer working in an undercover capacity ("Undercover Officer") signed into a peer-to-peer (P2P) program,² which is publicly-available, via an

aware.

² Peer-to-peer file-sharing is a method of communication available to Internet users through the use of special software. Computers linked together through the Internet using this software form a network that allows for the sharing of digital files between users on that network. A user first obtains the P2P software,

internet-connected computer located within the Eastern District of New York. The Undercover Officer memorialized the session by intermittent video capture. Any download activity from the session was monitored via a network monitoring program.

4. Upon signing in to the publicly available P2P file sharing program, the Undercover Agent observed that the user "JEDGER1" was online. The Undercover Agent proceeded to browse JEDGER1's shared directories and observed numerous files with titles indicative of child pornography.

5. The Undercover Agent downloaded still image files which appeared to depict child pornography from JEDGER1. During this session, the Internet Protocol ("IP") Address for JEDGER1 was traced to Internet Service Provider Optimum Online/Cablevision. Records obtained from Optimum Online/Cablevision by subpoena showed that this IP Address was subscribed at the time of the download to the residence of the mother of defendant BRENDON CUEVAS in Shirley,

which can be downloaded from the Internet. In general, P2P software allows the user to set up files on a computer to be shared with others running compatible P2P software. A user obtains files by opening the P2P software on the user's computer, and conducting searches for files that are currently being shared on another user's computer. The latest evolution of P2P software is a program that allows a user to set up his own private P2P network of contacts. File-sharing through this new and publicly available P2P file-sharing program is limited only to other users who have been added to a private list of "friends." A new user is added to a list of friends by request. Acceptance of a friend request will allow that new user to download files from the user who sent the friend request. The new user can then browse the list of files that the other user has made available to download, select desired files from this list, and download the selected files. The downloading of a file occurs through a direct connection between the computer requesting the file and the computer containing the file.

New York.

THE CONSENT SEARCH

6. On or about January 26, 2012, I, along with Suffolk County Police Department and the United States Marshals Service located the defendant BRENDON CUEVAS at his mother's residence in Shirley, New York. Defendant CUEVAS was arrested pursuant to a United States Army warrant for military desertion. Pursuant to this arrest, CUEVAS was interviewed, following waiver of his Miranda rights. Defendant CUEVAS admitted, in sum and substance and relevant part, that he had been using the peer-to-peer program and the screenname "JEDGER1." CUEVAS further admitted that he had thrown a USB ("Universal Serial Bus") drive into the bathroom garbage when agents came to the door because it contained child pornography which he did not want his mother to find. CUEVAS reviewed the images which had been downloaded by the undercover in May 2011 and initialed to indicate that he remembered them being on his computer. CUEVAS also indicated that he masturbated to the child pornography images. CUEVAS admitted that he would regularly install the peer-to-peer program on his mother's laptop, download and trade images, and then delete the program and downloads from the computer.

7. CUEVAS provided written consent to search his computer equipment. A preliminary review of a portion of this computer equipment revealed that on or about October 22, 2011, at approximately 4:36 p.m., Cuevas sent an email to another e-mail

user³ containing a Zip file (i.e. a large file containing smaller files) with approximately 27 images within. Three of these images, which are available for the Court's review, are of a known minor who has been identified by law enforcement. These images are described as follows:

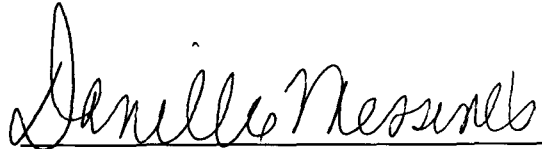
- a. "PG9769.JPG" is a still image depicting a prepubescent male child approximately 7-9 years old shown with an erect penis;
- b. "PG9770.jpg" is a still image depicting a prepubescent male child approximately 7-9 years old shown with an erect penis; and
- c. "PG9772.jpg" is a still image depicting an adult male touching the penis of a prepubescent male child approximately 7-9 years old.

8. Among other items of child pornography, also recovered from the computer equipment of defendant BRENDON CUEVAS were screenshots which appear to have been taken from a web cam

³ The public profile for this user indicates that this e-mail account belongs to a male middle school student, approximately eleven to twelve years' old. Agents are currently investigating in order to locate this minor.


video session. These screen shots depict a boy, approximately ten to twelve years old, who is masturbating.

WHEREFORE, Your affiant also respectfully requests that the defendant BRENDON CUEVAS be dealt with according to law.



Danielle Messineo
Special Agent - FBI

Sworn to before me this
30 day of January, 2012



THE HONORABLE GARY R. BROWN
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK